## NANDA KUMAR K KALIAPAN v. PP & ANOTHER APPEAL

COURT OF APPEAL, PUTRAJAYA
AZAHAR MOHAMED JCA
BALIA YUSOF WAHI JCA
MOHD ZAWAWI SALLEH JCA
[CRIMINAL APPEALS NO: A-05-319-12-2012
& A-05-320-12-2012]
14 JANUARY 2015

***CRIMINAL LAW:*** *Penal Code – Section 302 – Murder – Prima facie case – Whether established – Witnesses' testimony that deceased had been attacked by appellants with parang – Whether appellants were properly and positively identified – Witnesses' failure to state in oral evidence that one appellant wore helmet – Whether failure of witnesses to give exact details a ground for rejecting entire evidence – Identification parade – Failure of prosecution to call police witnesses during identification parade – Whether fatal – Whether appellants properly identified as perpetrators of crime*

***CRIMINAL PROCEDURE:*** *Appeal – Conviction and sentence – Murder – Prima facie case – Whether established – Witnesses' testimony that deceased had been attacked by appellants with parang – Whether appellants were properly and positively identified – Witnesses' failure to state in oral evidence that one appellant wore helmet – Whether failure of witnesses to give exact details a ground for rejecting entire evidence – Identification parade – Failure of prosecution to call police witnesses during identification parade – Whether fatal – Whether appellants properly identified as perpetrators of the crime*

***EVIDENCE:*** *Witness – Identification of accused persons – Whether properly and positively identified – Witnesses' failure to state in oral evidence that one appellant wore helmet – Whether failure of witnesses to give exact details a ground for rejecting entire evidence – Whether there was sufficient evidence on identification of accused persons – Whether accused persons properly identified as perpetrators of crime*

***EVIDENCE:*** *Identification parade – Conduct of – Identification of accused persons – Whether properly and positively identified – Failure of prosecution to call police witnesses during identification parade – Whether fatal – Whether there was sufficient evidence on identification of accused persons – Whether accused persons properly identified as perpetrators of crime*

The appellants were charged under s. 302 of the Penal Code for the murder of the deceased. Witnesses testified that the deceased, who was working as a cashier at a petrol station, had been attacked by the appellants who were armed with parang. The deceased's cause of death was due to excessive bleeding from slash wounds. After the conclusion of the whole case, the first appellant and the second appellant were found guilty and sentenced to death. Hence, both the appellants appealed. The two appeals were heard together. The appellants submitted that without proper and positive identification, the

prosecution had failed to prove a *prima facie* case against the appellants. The issues that arose for determination were (i) whether the identification evidence of SP2 and SP4 was unbelievable in light of the CCTV recording showing a different version from the one given by SP2 and SP4 since no mention was made about one of the attackers wearing a helmet; (ii) whether police witnesses were called to testify on the identification parade; and (iii) whether adverse inference under the provisions of s. 114(g) of the Evidence Act 1950 ought to be drawn on the failure of the prosecution to call police witnesses on the holding of the identification parades.

**Held (dismissing appellants' appeal; affirming convictions and sentences)**
**Per Balia Yusof Wahi JCA delivering the judgment of the court:**

**(1)** The failure of both SP2 and SP4 to mention about a helmet being worn by one of the attackers was not fatal to the prosecution's case. The CCTV recording was played in court for all to see and no issue was taken about the helmet on one of the appellants as visible from the recordings. It was not raised by the defence and neither was it picked up by the prosecution. It was unfair to treat the evidence of SP2 and SP4 as unbelievable only for the fact that they have failed to state in their oral evidence that one of the men was wearing a helmet. The failure of a witness to give exact details and narration of an event could never be a ground for rejecting his entire evidence. There was no rule of law that the testimony of a witness must either be believed in its entirety or not at all. The Judicial Commissioner ('JC') was correct in relying on the evidence from the CCTV recording which was properly admitted and confirmed by SP14, the gas station operator. (paras 20 & 21)

**(2)** The holding of an identification parade is part and parcel of the investigation process carried out by the police. Evidence given by witnesses through identification parade may be used to corroborate the substantive evidence given in court on identification of an accused as the perpetrator of the crime. Under the *Turnbull* guidelines, if after having evaluated the identification evidence, the judge is satisfied that the quality of the identification evidence is good, the judge is entitled to rely on that evidence. The failure of the prosecution to call police witnesses with regard to the holding of the identification parade was not fatal. There was nothing perverse in the findings made and there was sufficient evidence on the identification of the appellants. The appellants had been properly identified as the perpetrators of the crime for which they stood charged. (paras 28, 29, 31, 32 & 33)

***Bahasa Malaysia*** *Translation Of Headnotes*

Perayu-perayu telah dituduh di bawah s. 302 Kanun Keseksaan kerana membunuh si mati. Saksi-saksi memberikan keterangan bahawa si mati, yang bekerja sebagai juruwang di sebuah stesyen minyak, telah diserang oleh perayu-perayu yang bersenjatakan parang. Sebab kematian si mati adalah berpunca daripada pendarahan teruk akibat kesan luka. Selepas tamatnya

keseluruhan kes tersebut, perayu pertama dan perayu kedua didapati bersalah dan dihukum mati. Oleh itu, kedua-dua perayu merayu. Kedua-dua rayuan didengar secara bersesama. Perayu-perayu menghujahkan bahawa tanpa pengenalpastian yang betul dan positif, pihak pendakwaan telah gagal membuktikan kes *prima facie* terhadap perayu-perayu. Isu-isu yang timbul adalah (i) sama ada keterangan pengenalpastian SP2 dan SP4 tidak boleh dipercayai berdasarkan rakaman CCTV yang menunjukkan versi yang berbeza daripada versi SP2 dan SP4 kerana tiada rujukan dibuat berkenaan salah satu penyerang memakai topi keledar; (ii) sama ada tiada saksi polis dipanggil untuk memberi keterangan berkenaan kawad cam; dan (iii) sama ada tanggapan bertentangan di bawah peruntukan s. 114(g) Akta Keterangan 1950 patut dibuat atas kegagalan pihak pendakwaan memanggil saksi-saksi polis tentang pengendalian kawad cam.

**Diputuskan (menolak rayuan perayu-perayu; mengesahkan sabitan dan hukuman)**

**Oleh Balia Yusof Wahi HMR menyampaikan penghakiman mahkamah:**

**(1)** Kegagalan kedua-dua SP2 dan SP4 untuk menyebut tentang topi keledar yang dipakai oleh salah seorang penyerang tidak menjejaskan kes pendakwaan. Rakaman CCTV telah dimainkan di mahkamah untuk ditonton oleh semua dan tiada isu dibangkitkan berkenaan topi keledar yang dipakai oleh salah seorang perayu yang dapat dilihat dari rakaman. Ia tidak dibangkitkan oleh pihak pembelaan dan juga tidak disentuh oleh pihak pendakwaan. Adalah tidak adil untuk mengangggap keterangan SP2 dan SP4 sebagai tidak boleh dipercayai semata-mata atas fakta bahawa mereka telah gagal menyatakan dalam keterangan lisan mereka bahawa salah seorang daripada lelaki tersebut memakai topi keledar. Kegagalan saksi untuk memberikan butir-butir dan penceritaan yang tepat berkenaan sesuatu kejadian tidak boleh menjadi alasan untuk menolak keseluruhan keterangannya. Tiada peraturan undang-undang bahawa keterangan saksi harus dipercayai sepenuhnya atau tidak sama sekali. Pesuruhjaya Kehakiman ('PK') adalah betul apabila bergantung kepada keterangan daripada rakaman CCTV yang telah diakui dengan betul dan disahkan oleh SP14, pengendali stesyen minyak.

**(2)** Pengendalian sesuatu kawad cam adalah sebahagian daripada proses penyiasatan yang dijalankan oleh pihak polis. Keterangan yang diberikan oleh saksi-saksi melalui kawad cam boleh digunakan untuk menyokong keterangan substantif yang diberikan di mahkamah berkenaan pengenalpastian tertuduh sebagai pelaku jenayah. Di bawah garis panduan *Turnbull*, setelah menilai keterangan pengenalpastian, jika hakim berpuas hati bahawa kualiti keterangan pengenalpastian adalah baik, hakim berhak untuk bergantung kepada keterangan tersebut. Kegagalan pihak pendakwaan untuk memanggil saksi polis berkenaan pengendalian kawad cam tidak menjejaskan kes.

A Tiada apa-apa yang bertentangan berkenaan dengan dapatan yang dibuat dan terdapat keterangan yang memadai berkenaan pengenalpastian perayu-perayu. Perayu-perayu telah dikenalpasti dengan betul sebagai pelaku-pelaku jenayah seperti yang dipertuduhkan.

B **Case(s) referred to:**
*Budhsen & Another v. State of UP [1970] Cri LJ 1149 SC* ***(refd)***
*Khoon Chye Hin v. PP [1961] 1 LNS 41 HC* ***(refd)***
*Lim Tiong Seng & Satu Lagi lwn. PP [2011] 5 CLJ 1 CA* ***(refd)***
*PP v. Datuk Haji Harun Haji Idris (No 2) [1976] 1 LNS 184 FC* ***(refd)***

C **Legislation referred to:**
Evidence Act 1950, s. 114(g)
Penal Code, s. 302

*For the 1st appellant - Simon Murali (Goh Ze Fen with him); M/s Lio & Partners*
*For the 2nd appellant - Rao Jayananda; M/s Rao & Kamal*
*For the prosecution - Mazelan Jamaluddin; DPP*

D *[Appeal from High Court, Ipoh; Criminal Trial No: 45-22-2009 & 45B-1-2009]*

*Reported by Suhainah Wahiduddin*

## JUDGMENT

E **Balia Yusof Wahi JCA:**

**Facts**

**[1]** As a routine to her daily life, on 11 November 2008, around 6.55am, a cashier of the Petronas Petrol Station, Nor Azila bt Mohd Sofian ("SP2"),
F reported for work. Her work shift was from 7am until 3pm on that day. The deceased (who was fondly referred to as Ustaz) also worked as a cashier whose shift was from 11pm the previous night until 7am on that day. The deceased was at the cashier counter when SP2 arrived and ready to take over his duties at the counter. Two others, Azman bin Mohd Safari, ("SP4") and
G one Pak Cik Idris, were at the petrol pumps. After keeping her personal belongings at the cashier section and switching on her computer to start her shift, SP2 proceeded to an automated teller machine ("ATM") located near the cashier counter as she wanted to transfer money. Whilst at the ATM, SP2 heard the deceased shouting loudly and saw the deceased fighting with a male
H Indian at the cashier counter and another male Indian coming towards her. SP2 described the male Indian at the counter as one wearing a cap, tall and thin. She identified the second appellant as this man. She said the one approaching her wore a sweater and was holding a parang. She identified him as the first appellant. She was terrified and ran out towards the direction of
I the Mobil Petrol Station located nearby, followed by Pak Cik Idris.

**[2]** SP4 testified that, while he was doing his work at pump no. 10, he saw a red Proton Saga Aeroback car stopping at pump no. 7. A male Indian alighted from the car and went to the counter to pay for petrol refilling. After

filling up, the car moved away and was parked by the roadside near the drain. Three male Indians were seen going inside the Petronas convenience store ("store") as if to purchase things. Shortly thereafter, he heard someone screaming. He saw SP2 running out towards the Mobil Petrol Station followed by Pak Cik Idris. SP4 then saw people quarrelling at the cashier counter. He proceeded forward intending to stop the quarrel. He saw a male Indian wearing a dark coloured shirt holding a parang coming towards the direction of the deceased. On seeing this and feeling scared and shocked, SP4 retreated to pump no. 10. SP4 identified the male Indian holding the parang as the first appellant. SP4 saw another male Indian (whom he identified as the third accused in the High Court named Ganeson a/l Nadarajah) standing by the driver's door of the red Proton Saga Aeroback. This male Indian did not enter the store. SP4 then tried, but failed to stop a lorry at the main road. He went back to pump no. 10 and from there he saw a male Indian wearing a cap taking money from the counter. He saw the face of this male Indian whom he identified in court as the second appellant. Subsequently, SP4 saw the three male Indians coming out from the store and left in the red Proton Saga Aeroback.

**[3]** A while later, SP2 returned to the store and saw the deceased seated at the table beside the cashier area. He was bleeding on the face and crying "sakit, sakit". SP2 approached a male customer who had parked his car outside the store seeking his help to call the police and an ambulance. When the police and the ambulance arrived, the deceased was already dead. As stated in the evidence of SP12, the cause of death was due to excessive bleeding from slash wounds.

**[4]** Resulting from this, four male Indians were arrested and charged for murder.

**[5]** Nanda Kumar a/l Kaliapan, the appellant in Appeal No. A-05-319-12/2012, was charged with two other persons named Thayalan a/l Muniandy and Ganeson a/l Nadarajah. The three were charged under s. 302 of the Penal Code which reads:

> Bahawa kamu bersama-sama dengan seorang lagi yang masih bebas pada 11.11.2008 jam lebih kurang 6.58 pagi di Lot 191515, Stesyen Minyak Petronas Gunung Lang, Jalan Kuala Kangsar, Ipoh dalam Daerah Kinta dalam Negeri Perak Darul Ridzuan, telah melakukan pembunuhan dengan menyebabkan kematian ke atas Mohammad Khairuddin bin Mohamed Isa, KPT 660506-08-5069 dan oleh yang demikian, kamu telah melakukan kesalahan yang boleh dihukum di bawah Seksyen 302 Kanun Keseksaan dibaca bersama Seksyen 35 Kanun yang sama.

**[6]** At the close of the prosecution's case, both Thayalan a/l Muniandy and Ganeson a/l Nadarajah were acquitted and discharged without their defence being called; while Nanda Kumar a/l Kaliapan was ordered to enter his defence. After the conclusion of the whole case, Nanda Kumar a/l Kaliapan was found guilty, convicted and sentenced to death. Hence, this appeal.

**[7]** The fourth person, Yugaraja a/l Nyanasekaran, the appellant in Appeal No. A-05-320-12/2012, was also charged for the same offence but separately on his own. The charge against him reads:

> Bahawa kamu bersama 3 orang lagi yang telah dituduh, pada 11.11.2008 jam lebih kurang 6.58 pagi di Lot 191515, Stesyen Minyak Petronas Gunung Lang, Jalan Kuala Kangsar, Ipoh dalam Daerah Kinta dalam Negeri Perak Darul Ridzuan, telah melakukan pembunuhan dengan menyebabkan kematian ke atas Mohammad Khairuddin bin Mohamed Isa, KPT 660506-08-5069 dan oleh yang demikian, kamu telah melakukan kesalahan yang boleh dihukum di bawah Seksyen 302 Kanun Keseksaan dibaca bersama Seksyen 35 Kanun yang sama.

**[8]** The two cases were heard together in the High Court and the appellant Yugaraja a/l Nyanasekaran was also found guilty and sentenced to death and he is now also appealing against the said conviction and sentence.

**[9]** We heard the two appeals together.

**[10]** In the trial before the High Court, the appellant Nanda Kumar a/l Kaliapan was referred to as the first accused and in this appeal we will be referring to him as the first appellant, while the appellant Yugaraja a/l Nyanasekaran who was referred to as the fourth accused in the High Court will be referred to as the second appellant in this appeal

**The Appeal**

**[11]** Both the appellants essentially raised only one main issue in that, the learned Judicial Commissioner ("JC") had erred in finding that there was a *prima facie* case established against them. In amplification of the issue, learned counsel had touched on the issue of identification of the appellants by SP2 and SP4 and also the CCTV recording. It was submitted that without proper and positive identification, the prosecution had failed to prove a *prima facie* case against the two appellants.

**[12]** Mr Simon Murali, learned counsel for the first appellant submitted that the identification evidence of SP2 and SP4 is unbelievable in the light of the CCTV recording. It was submitted that the CCTV recording (exh. P57A) showed a different version from the one given by SP2 and SP4. Because of this, learned counsel further contended that there were two sets of evidence and the learned JC should have accepted the CCTV recording instead of the evidence of SP2 and SP4.

**[13]** In the oral evidence of both SP2 and SP4, no mention was made about anybody wearing a helmet. As pp. 63-64 of the appeal record SP2 testified as follows:

> Saya telah pergi ke mesin ATM untuk memindahkan wang pada masa itu. Ketika itu ustaz masih berada di bahagian cashier. Ketika saya berada di mesin ATM saya terdengar ustaz menjerit dengan kuat sangat. Saya terus toleh ke belakang dan saya nampak ustaz tengah berlawan dengan orang India.

Saya terus pandang ke bahagian cashier dan nampak ada seorang berbangsa India lelaki. Seorang lagi lelaki India menuju ke arah saya. Saya nampak dua orang sahaja.

Saya tidak pasti pakaian yang digunakan oleh lelaki India yang berada di bahagian cashier. Dia memakai cap, tinggi iaitu kurus dan tinggi manakala yang menuju ke arah saya memakai sweater dan ada parang pada tangannya. Semasa itu lelaki di bahagian cashier sedang berlawan dengan ustaz dan saya tidak pasti sama ada ia ada senjata atau tidak.

**[14]** As for SP4, he was working at the pump and saw an Indian man wearing a dark coloured shirt holding a parang going into the store towards the deceased. But he made no mention about anyone wearing a crash helmet.

**[15]** The CCTV recording shows the deceased being attacked by two armed men. One of them was wearing a crash helmet while the other was wearing what appeared to be a baseball cap.

**[16]** Learned counsel for the first appellant applied for the CCTV recording to be viewed by the panel in open court. The learned Deputy Public Prosecutor and counsel for the second appellant both had no objection.

**[17]** Upon viewing the CCTV recording, we noted that there were two men attacking someone at the cashier counter. Each of the assailant appeared to be armed with what looked like a parang. One was wearing a helmet and the other had a baseball cap.

**[18]** The learned Deputy Public Prosecutor submitted that the issue about the helmet was never raised in the court below. This issue is raised at the appellate stage merely to discredit the evidence of SP2 and SP4.

**[19]** The learned JC made an observation that from her viewing of the CCTV recording, it clearly showed in one sequence, a man at the counter being attacked by another seen brandishing a weapon very much like a long parang with resultant splattering of blood. Her Ladyship further noted that the time shown in the recording from about 7am to 7.30am on 11 November 2008 which is consistent with and corroborates the evidence of both SP2 and SP4.

**[20]** In our considered view, the failure of both SP2 and SP4 to mention about a helmet being worn by one of the attackers is not fatal to the prosecution's case. It was a non-issue during the trial itself. The CCTV recording was played in court for all to see and no issue was taken about the helmet on one of the appellants as visible from the recordings. It was not raised by the defence and neither was it picked up by the prosecution. The learned JC too, had not made any observation about it. It is unfair to treat the evidence of SP2 and SP4 as unbelievable only for the fact that they have failed to state in their oral evidence that one of the men was wearing a helmet. The failure of a witness to give exact details and narration of an event can never be a ground for rejecting his entire evidence. It has been held that

even if a witness is found to be lying on one or two points it does not mean that his whole evidence must be rejected. There is no rule of law that the testimony of a witness must either be believed in its entirety or not at all. (*PP v. Datuk Haji Harun Haji Idris (No 2)* [1976] 1 LNS 184, *Khoon Chye Hin v. PP* [1961] 1 LNS 41; [1961] 1 MLJ 105b). Witnesses are not expected to have a photographic mind to be able to recollect every detail of an event. We must be realistic and accept human fallibilities.

**[21]** We are unable to accede to learned counsel's submissions that there were two sets of evidence before the court. The learned JC had found SP2 and SP4 to be credible witnesses and accepted their evidence. The credibility of a witness is primarily for the trial judge. As an appellate court, we ought to be greatly influenced by the opinion and findings of the learned JC who has seen and heard the witnesses. Her Ladyship was also right in relying on the evidence from the CCTV recording (exh. P57A) which was properly admitted and confirmed by SP14, the Petronas station operator.

**[22]** The appellants' appeal on this ground must fail.

**Identification**

**[23]** The thrust of the appellants' submission in contending that no *prima facie* case had been established against them rested solely on the issue of identification. It was submitted that the identification of the appellants by SP2 and SP4 was bad. The appellants were identified in court through court identification by both SP2 and SP4 who also attended identification parades held sometime after the incident.

**[24]** It was submitted that the identification of the appellants in court by both SP2 and SP4 must be viewed with great suspicion. The witnesses were testifying in court of an event that took place about two years earlier. This brings us to an earlier issue which we have said that witnesses cannot be expected to have a photographic memory. As to the identification parades, there is not a shred of evidence as to who conducted the parades, when it was held, who the participants were or how the identification was made. No police witnesses were called to testify on the identification parade. These are the circumstances which ought to be considered by the learned JC in accepting the evidence of SP2 and SP4 in the identification of the appellants. Learned counsel further contended that the adverse inference under the provisions of s. 114(g) of the Evidence Act 1950 ought to be drawn on the failure of the prosecution to call police witnesses on the holding of the identification parades.

**[25]** In accepting the evidence of the two witnesses named, the learned JC had done remarkably well in her exercise of judicial function of deliberating and assessing the evidence of the said two witnesses. We have perused the records of appeal and referring to the grounds of judgment therein, we note that Her Ladyship had devoted her attention to the evidence of SP2 at

pp. 18-20 of the records and had also "anxiously considered" ( to borrow her words) the evidence of SP4 at pp. 21-23 of the same. We do not intend to reproduce them in this judgment.

**[26]** Having done so, the learned JC concluded beginning from p. 23 of the appeal record thus:

> There was no basis for me to reject SP2 and SP4's evidence as I observed that they were credible witnesses who held fast to their identification of the first and fourth accused who were seen inside the Kedai Mesra and the third accused seen standing by the side of the red car (P39). Furthermore, SP2 and SP4 were not challenged directly in cross-examination that their identification of the first, third and fourth accused was a mistake or was wrong. Rather it was done in a vague and indirect manner which failed to refute SP2 and SP4's resolute, positive and unwavering identification of the three accused. It was never suggested to SP2 and SP4 by defence counsel that there were circumstances which did not allow for positive identification or had affected their identification in court such that it could be incorrect or inaccurate despite their overall positive testimony that they were able to identify the two accused persons inside the shop.
>
> SP2 and SP4 remained steadfast in their testimony in re-examination that they identified the said accused because they saw and remembered their faces with reference to their evidence as earlier quoted. There was no reason for me to reject their evidence pertaining to identification of the relevant accused when seen in the light that they tended to corroborate each other where identification of the first and fourth accused was concerned. They singled out the two accused in court separately but accurately. SP4 in addition had this to say about the condition of the place of incident:
>
> > Di dalam Petronas keadaan cahaya ada terang ketika itu. Keadaan cahaya di bahagian pam-pam minyak adalah terang. Ketika saya berada di pam 10, jarak dengan lelaki India yang bergaduh dengan ustaz adalah dalam 20 kaki.
>
> This was not rebutted or challenged in cross-examination. So much for identification.

**[27]** Learned counsel for the first appellant was right in submitting that the learned JC relied on court identification of the appellants. At p. 21 of the appeal record, the following finding in respect of SP2's evidence was made:

> From my evaluation of SP2's evidence thus, she was very certain and unfaltering about her dock identification of the first and fourth accused.

And on SP4's evidence of identification:

> SP4's testimony pertaining to his identification in court of the three accused was anxiously considered by me.

**[28]** The holding of an identification parade is part and parcel of the investigation process carried out by the police. Evidence given by witnesses through identification parade may be used to corroborate the substantive

A evidence given in court on identification of an accused as the perpetrator of the crime. In this instance, reference may be made to *Budhsen & Another v. State of UP* [1970] Cri LJ 1149 SC where at p. 1153 it was stated:

> The identification parades belong to the investigation stage. They are generally held during the course of investigation with the primary object
B of enabling the witnesses to identify persons concerned in the offence, who were not previously known to them. This serves to satisfy the investigating officers of the *bona fides* of the prosecution witnesses and also to furnish evidence to corroborate their testimony in Court. Identification proceedings in their legal effect amount simply to this, that certain persons are brought to jail or some other place and make
C statements either express or implied that certain individuals whom they point out are persons whom they recognise as having been concerned in the crime. They do not constitute substantive evidence.

**[29]** In our view, the findings made by the learned JC on the importance of identification evidence given by witnesses *via* court identification is
D correct in law. Reference was made to *Lim Tiong Seng & Satu Lagi lwn. PP* [2011] 5 CLJ 1. At p. 15 of the report, Ahmad Maarop JCA (as he then was) stated as follows:

> [21] Kedudukan undang-undang tentang pengecaman adalah jelas. Keterangan substantif adalah pengecaman ke atas orang kena tuduh
E sebagai orang yang telah melakukan kesalahan oleh saksi-saksi dalam mahkamah semasa perbicaraan. Keterangan pengecaman dalam kawad cam adalah relevan dan boleh digunakan sebagai keterangan sokongan kepada keterangan substantif yang dinyatakan tadi (lihat *Budhsen v. State of UP* [1970] Cri LJ 1149, *Malkansingh v. State of Madhya Pradesh* [2003] Cr LJ 3535 SC, *Vaikuntam Chandrappa v. State of AP* [1960] Cri LJ 1681,
F *Arumugam Muthusamy v. PP* [1998] 3 CLJ 597].

**[30]** In further deliberation of the matter, the learned JC in the instant appeal had considered other authorities relevant to the issue and we reproduce below an excerpt from her judgment at pp. 16-17 of the appeal
G records stating:

> In *Ong Poh Cheng v. PP* [1998] 4 CLJ 1, rejection of evidence of the identification at the identification parade was in no way fatal to the dock identification of the appellant as the robber.
>
> Even failure to hold a test identification parade would not make
H inadmissible the evidence of identification in court. The weight to be attached to such identification should be a matter for the courts of fact. In appropriate cases it may accept the evidence of identification even without insisting on corroboration (see the Indian Supreme Court decision in *Malkansingh v. State of Madya Pradesh* (*supra*) referred to in *Dorai Pandian a/l Munian & Ragu a/l Pakitan v. Pendakwa Raya* (Court of Appeal)
I (Rayuan Jenayah No. J-05-38-2006 & J-05-39-2006)).
>
> I was well-guided by Ahmad Maarop JCA (as His Lordship then was) on the law on identification in *Dorai Pandian a/l Munian & Ragu a/l Pakitan v. Pendakwa Raya and Lim Tiong Seng & satu lagi v. PP* (*supra*). Invariably

the *Turnbull* guidelines (*R v. Turnbull & Others* [1976] 3 All ER 549) were noted but each case depends on its own facts and what was stated in *Turnbull* does not amount to inflexible rules with no exception whatsoever (see *Jaafar bin Ali v. PP* [1998] 4 MLJ 406, *Tan Kim Hoo v. PP & Anor Appeal* [2007] 6 CLJ 557, *Erivesto Anderson & Anor v. PP* [2008) 6 CLJ 453). To hold that an identification parade must in all circumstances be conducted in order to sustain a conviction would be too stringent (See: *Arumugam s/o Muthusamy v. PP* (*supra*) at p. 75).

**[31]** We are in agreement with the learned JC. Under the *Turnbull* guidelines, if after having evaluated the identification evidence, the judge is satisfied that the quality of the identification evidence is good, the judge is entitled to rely on that evidence. It is only in cases where the identification evidence is poor that the judge should look for further evidence to support the correctness of the identification. Where the judge is impressed by the evidence of a particular witness on whose testimony he can safely rely, there is no necessity to go further on identification parades.

**[32]** In our view, the failure of the prosecution to call police witnesses with regard to the holding of the identification parade is not fatal.

**[33]** Accepting the evidence of SP2 and SP4 on the identification of the appellants *via* court identification is an exercise of her judicial function which this court will always be slow to interfere. We had not detected anything perverse in the findings made and we find that there were sufficient evidence on the identification of the appellants. Considering the overall facts and circumstances of the case, and the nature of the evidence proffered by the prosecution, we find that the appellants had been properly identified as the perpetrators of the crime for which they stand charged.

**[34]** We find the submissions of counsels on the issue of identification to be devoid of merits.

**[35]** We unanimously dismiss both the appellants' appeal and affirm the convictions and sentence passed by the High Court.